

Dismissed and Opinion filed December 7, 2000.



In The

Fourteenth Court of Appeals

NOS. 14-00-01413-CR &
14-00-01414-CR

CARLOS OLIVARES LOPEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause Nos. 851,822 & 851,823

OPINION

After a guilty plea, appellant was convicted of the offense of aggravated sexual assault of a child. On September 29, 2000, he was sentenced to fifteen years in the Texas Department of Criminal Justice--Institutional Division. No motion for new trial was filed. Appellant's notice of appeal was not filed by the district clerk until November 3, 2000.

A defendant's notice of appeal must be filed within thirty days after sentence is imposed when the defendant has not filed a motion for new trial. *See* TEX. R. APP. P. 26.2(a)(1). A

notice of appeal which complies with the requirements of Rule 26 is essential to vest the court of appeals with jurisdiction. *See Slaton v. State*, 981 S.W.2d 208, 210 (Tex. Crim. App. 1998). If an appeal is not timely perfected, a court of appeals does not obtain jurisdiction to address the merits of the appeal. Under those circumstances it can take no action other than to dismiss the appeal. *See id.*

In this case, appellant mailed his notice of appeal to the district clerk. The envelope, which is included in the record, shows it was postmarked November 1, 2000. A document is considered timely filed if: (1) it is sent to the proper clerk by United State's Postal Service first-class, express, registered, or certified mail; (2) it is placed in an envelope or wrapper properly addressed and stamped; (3) it is deposited in the mail on or before the last day for filing; and (4) it is received within ten days after the filing deadline. *See* TEX. R. APP. P. 9.2(b)(1). Appellant failed to comply with the third requirement.

The appellate court will accept the a legible postmark affixed by the United States Postal Services and conclusive proof of the date of mailing. *See* TEX. R. APP. P. 9.2(b)(2). Appellant was sentenced on September 29, 2000, therefore, his notice of appeal was due October 30, 2000. The envelope in which appellant mailed the notice of appeal is postmarked November 1, 2000. Thus, appellant's notice of appeal was untimely.

Accordingly, the appeal is ordered dismissed.

PER CURIAM

Judgment rendered and Opinion filed on December 7, 2000.

Panel consists of Justices Yates, Wittig, and Frost.

Do Not Publish — *See* TEX. R. APP. P. 47.3(b).